

Date: November 7, 1996

Case No.: 95-TSC-7

In the Matter of

WILLIAM C. BIDDY,
Complainant

v.

ALYESKA PIPELINE SERVICE CO.,
Respondent

SECOND RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT
AND
ORDER OF DISMISSAL WITH PREJUDICE

This matter involves a complaint filed under the Employee Protection Provisions of the Toxic Substances Control Act of 1976, 15 U.S.C. § 2622, the Water Pollution Control Act, 33 U.S.C. § 1367, the Clean Air Act, 42 U.S.C. § 7622 and the Solid Waste Disposal Act, 42 U.S.C. § 6971.

On April 22, 1996 the undersigned Administrative Law Judge recommended that the Administrative Review Board ("ARB") grant a "Joint Motion to Approve Settlement Agreement and For Order of Dismissal," and approve a "Settlement Agreement, Release and Covenant Not to Sue." The ARB remanded the matter on August 1, 1996 for reconsideration of the proposed settlement agreement and the taking of such additional evidence as deemed necessary to comply its Order of Remand.

The ARB found upon its review of the settlement that it could not determine the actual amount of money to be paid to the Complainant pursuant to the proposed settlement. It expressed a concern that it lacked sufficient information to determine if the proposed settlement agreement adequately protects the public's interest and equitably treats the Complainant. The ARB also expressed concern that it did not have complete information on the arrangement between Complainant and his attorney for fees and costs.

A telephonic hearing was held before the undersigned Administrative Law Judge on November 1, 1996. Complainant offered into evidence attorney fee contracts between Complainant and Hardy & Johns, Attorneys at Law, and Complainant and Attorney Billie Pirner Garde; two settlement agreements, one intended to

resolve this Department of Labor complaint, and a second titled "General Release and Covenant Not To Sue," that has been referred to in prior documentations as a second settlement pertaining to state law claims; and an affidavit of an accountant for the law firm of Hardy & Johns containing a ledger of expenses occurred.

Complainant testified during the hearing that he signed the settlement agreements voluntarily, without duress and after consultation with counsel, and that he signed the attorney fee arrangements voluntarily and without duress. (Tr. 9, 11, 12, 14, 16)

Complainant's attorney provided a brief explanation of the expenses incurred and how Complainant's expenses were a proportion of a pool of expenses shared by seven individuals who brought whistleblower complaints against Alyeska. (Tr. 16-18) Complainant testified that he understood that arrangement. (Tr. 14)

After due consideration of the proposed settlements, that is, Settlement Agreement, Release and Covenant Not to Sue and General Release and Covenant Not To Sue, in light of the nature of the complaint, the disputed issues presented by the pleadings, the vagaries of litigation, IT IS HEREBY DETERMINED that the terms of the settlement are fair, adequate and reasonable as asserted by the parties in their joint motion. It is RECOMMENDED that the Secretary approve the attached settlement and issue an order dismissing the instant complaint with prejudice. **See 29 C.F.R. § 24.6.**

THOMAS M. BURKE
Administrative Law Judge

TMB:mr

